



## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
10/774,486	02/10/2004	Hiroshi Ohno	1743/230	8906	
23838	7590 07/09/2004	EXAMINER			
KENYON & KENYON			MYERS,	MYERS, PAUL R	
1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005			ART UNIT	PAPER NUMBER	
	,		2112		
			DATE MAILED: 07/09/2004	DATE MAILED: 07/09/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of sime may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply is specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will by statute, cause the application to become ABANDE (30 LS C, § 133).  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  Status  1) Responsive to communication(s) filed on 10 February 2004.  2a) This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-29 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) is/are allowed.  6) Claim(s) is/are allowed.  6) Claim(s) is/are rejected.  7) Claim(s) are subjected to by the Examiner.  4pplication Papers  9) The precification is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).	en frage (19	Application No.	Applicant(s)			
Paul R. Myers 2112  The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of them may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filled after SIX (6) MONTHS from the making date of this communication.  If the period to reply specified above is less than thin (50) days, a reply within the databory, minimum of thisty (30) days, a will dead after SIX (6) MONTHS from the making date of this communication.  Failure to reply within the set or extended period for reply will, by statule, cause the application to become ABANDONED (33 U.S.C. § 133).  Any reply recided by the Office later than there anothers after the maining date of this communication, even if timely filled, may reduce any examined patient term adjustment. See 37 CFR 1.704(b).  Status  1) Responsive to communication(s) filled on 10 February 2004.  2a) This action is FINAL.  2b) This action is non-final.  3) Is note this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-29 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) 1-29 is/are rejected.  7) Claim(s) is/are allowed.  6) Claim(s) 1-29 is/are rejected.  7) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of		10/774,486	OHNO ET AL.			
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Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).	10) The drawing(s) filed on is/are: a) a	ccepted or b) objected to by	he Examiner.			
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Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			-	` *		
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ul>	11) The oath or declaration is objected to by the	Examiner. Note the attached Of	ffice Action or form P	ГО-152.		
<ul> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ul>	Priority under 35 U.S.C. § 119					
<ul> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ul>		gn priority under 35 U.S.C. § 11	9(a)-(d) or (f).			
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).						
application from the International Bureau (PCT Rule 17.2(a)).		• • •				
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dee the attached detailed office action for a list of the certified copies not received.	• •		eived			
	See the attached detailed Office action for a list	st of the certified copies flot rec	eiveu.	<i>,</i>		
Attachment(s)	Attachment(s)					
1) Notice of References Cited (PTO-892)  4) Interview Summary (PTO-413)  Pager No(s)/Mail Date						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  Paper No(s)/Mail Date  5) Notice of Informal Patent Application (PTO-152)  Other:	3) X Information Disclosure Statement(s) (PTO-1449 or PTO/SB/0	(98) 5) Notice of Inform		O-152)		

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v.L. 6.

## **DETAILED ACTION**

## **Double Patenting**

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-29 are rejected under the judicially created doctrine of double patenting over claims 1-9 of U. S. Patent No. 6,715,016 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: PN 6,715,016 claims the control method while the current claims claim the apparatus performing the claimed method.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

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Allowable Subject Matter

Claims 1-29 would be allowable for the same reasons as the parent PN 6,715,016 with a 3.

properly filed terminal disclaimer.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's 4.

disclosure.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Paul R. Myers whose telephone number is 703 305 9656. The

examiner can normally be reached on Mon-Thur 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Mark Rinehart can be reached on 703 305 4815. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**PRM** 

July 7, 2004

PAUL R. MYERS

Paul R. Myors

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PRIMARY EXAMINER